

DEC 30 2009

**Board of Vocational Nursing
and Psychiatric Technicians**

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 GREGORY J. SALUTE

Supervising Deputy Attorney General
3 California Department of Justice

NANCY A. KAISER, State Bar No. 192083

4 Deputy Attorney General

300 So. Spring Street, Suite 1702

5 Los Angeles, CA 90013

Telephone: (213) 897-5794

6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8
9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
11 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN 2004-246

13 **WAYNE BANCROFT THELWELL**

1013 S. Front Street

14 Soledad, CA 93960

A C C U S A T I O N

15 **Vocational Nurse License No. VN 165471**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about January 6, 1994, the Bureau of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 165471 to Wayne
25 Bancroft Thelwell (Respondent). The Vocational Nurse License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on October 31, 2009, unless
27 renewed.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5

6

7
8
9

10
11
12
13
14

15
16
17

18

19
20

21

23

24

25

26

27

28

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 2519, states:

As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 "gross negligence" means a **substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed vocational nurse, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.**

9. California Code of Regulations, title 16, section 2520, states:

As set forth in Section 2878 of the Code, incompetence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 "incompetence" means the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by responsible licensed vocational nurses.

10. California Code of Regulations, title 16, section 2521, states, in part, that:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

11. Section 2518.5 of the Code states, in part, that:

The licensed vocational nurse performs services requiring technical and manual skills which include the following:

(a) Uses and practices basic assessment (data collection), participates in planning, executes interventions in accordance with the care plan or treatment plan, and contributes to evaluation of individualized interventions related to the care plan or treatment plan.

(b) Provides direct patient/client care by which the licensee:

(1) Performs basic nursing services as defined in subdivision (a).

12. Section 2518.6 of the Code states, in part, that:

1 (a) A licensed vocational nurse shall safeguard patients'/clients' health and
2 safety by actions that include but are not limited to the following:

3 ...
4 (2) Documenting patient/client care in accordance with standards of the
5 profession.

6 COST RECOVERY

7 13. Section 125.3 of the Code provides that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations
9 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 STATEMENT OF FACTS

12 14. While employed as a per diem or registry nurse, Respondent, a vocational
13 nurse, worked at Parkview Community Hospital Medical Center in Riverside, California
14 ("Parkview"). On or about August 11, 2004, Respondent was assigned to work the night shift on
15 the Bariatric¹ Unit at Parkview. Respondent was assigned to care for L.E., a female adult patient
16 who had undergone Gastric Bypass surgery earlier that day. Respondent did not monitor patient
17 L.E.'s urine output after the surgery as ordered by the doctor. The doctor's orders included
18 monitoring the patient's urine output and calling the doctor if the patient's urine output was less
19 than 40 cc in two hours, which would require the patient's urine output to be checked at least
20 every two hours.

21 15. Respondent admitted that he did not check the patient's urine output every
22 two hours during his shift. He claimed that he checked the patient's urine bag near midnight and
23 then again at 7:00 a.m., after being questioned by the oncoming registered nurse. At 7:00 a.m.
24 the patient's urine bag was empty. Subsequently, the patient's condition deteriorated. On or
25 about August 12, 2004, the patient was moved to the ICU. On or about August 13, 2004, the

26 1. Bariatrics is a branch of medicine that deals with the treatment of obesity.
27
28

1 patient was taken back to the operating room to repair a leak in her bowel. The patient died later
2 that day.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Incompetence and/or Gross Negligence)**

5 16. Respondent is subject to disciplinary action under sections 2875 and 2878,
6 subdivision (a)(1) of the Code, on the grounds of unprofessional conduct as defined in California
7 Code of Regulations, title 16, sections 2519 and 2520, in that Respondent committed acts of
8 incompetence and/or gross negligence, by failing to monitor patient L.E.'s urine output per
9 doctor's orders, as more fully described above in paragraphs 14 and 15.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Practice Basic Assessment)**

12 16. Respondent is subject to disciplinary action under sections 2875 and 2878,
13 subdivision (a), on the grounds of unprofessional conduct for violating California Code of
14 Regulations, title 16, section 2518.5, subdivision (a), in that Respondent failed to use and
15 practice basic assessment (data collection) in accordance with the care plan or treatment plan
16 when he failed to monitor patient L.E.'s urine output per doctor's orders, as more fully described
17 above in paragraphs 14 and 15.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Perform Basic Nursing Services)**

20 16. Respondent is subject to disciplinary action under Section 2878,
21 subdivision (a), on the grounds of unprofessional conduct for violating California Code of
22 Regulations, title 16, section 2518.5, subdivision (b)(1), in that Respondent failed to perform
23 basic nursing services when he failed to monitor patient L.E.'s urine output per doctor's orders,
24 as more fully described above in paragraphs 14, 15, and 16.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Failure to Adhere to Standards of the Profession)**

27 17. Respondent is subject to disciplinary action under Section 2878,
28 subdivisions (a) and (d), in conjunction with California Code of Regulations, title 16, section

1 2518.6, subdivision (a)(2), on the grounds of unprofessional conduct, in that Respondent failed to
2 safeguard patient L.E.'s health and safety when he failed to monitor patient L.E.'s urine output
3 per doctor's orders, as more fully described above in paragraphs 14 and 15.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct)**

6 17. Respondent's license is subject to disciplinary action under sections 2875
7 and 2878 of the Code, in that Respondent committed acts of unprofessional conduct, as more
8 fully described above in paragraphs 14 and 15.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Director issue a decision:

- 12 1. Revoking or suspending Vocational Nurse License Number VN 165471,
13 issued to Wayne Bancroft Thelwell;
- 14 2. Ordering Wayne Bancroft Thelwell to pay the Bureau of Vocational
15 Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of
16 this case, pursuant to Business and Professions Code section 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18

19 DATED: December 30, 2008

20
21 

22 TERESA BELLO-JONES, J.D., M.S.N., R.N.
23 Executive Officer
24 Bureau of Vocational Nursing and Psychiatric Technicians
25 Department of Consumer Affairs
26 State of California
27 Complainant
28